

Remarks

This document is submitted in response to the Office Action dated 3 October 2001, along with a Petition for One-Month Extension of Time, in which the Examiner required restriction to one of the following inventions under 35 USC § 121:

Groups I-VII: claims 1-19, 24-28, 30-31, each group drawn to a tissue cement protein comprising SEQ ID NO:1, 3, 6, 11, 14, 16, or 17, and method of use as a vaccine;

Group VIII: claims 20-23, and 30, drawn to a pharmaceutical composition;

Group IX-XV: claim 29, each group drawn to a method of bonding animal tissue comprising administration of a tissue cement protein comprising SEQ ID NO:1, 3, 6, 11, 14, 16, or 17;

Group XVI-XXII: claims 32-38, drawn to a nucleic acid encoding the tissue protein of SEQ ID NO:1, 3, 6, 11, 14, 16, or 17; and

Group XXIII-XXIX: claim 39, drawn to a transgenic animal containing a nucleic acid encoding the tissue protein of SEQ ID NO:1, 3, 6, 11, 14, 16, or 17;

The Examiner objected to claim 40, which claim is amended in response. This amendment does not add new matter, and the Examiner is respectfully requested to enter the amendment.

Responsive to the Requirement for restriction, Applicants elect to prosecute the invention of Group VI, with traverse. Claims 1-19, 24-28, 30, and 31, are drawn to a tissue cement protein comprising SEQ ID NO:16.

Applicants respectfully request reconsideration of the Requirement for Restriction or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of Claims designated by the Examiner in the present Application, for the following reasons.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required

unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

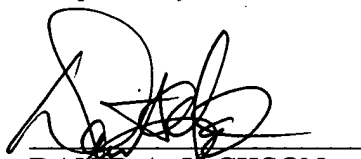
Applicants respectfully request the Examiner to include Group XIV, drawn to a method of bonding animal tissue, comprising administration of a tissue cement protein comprising SEQ ID NO:16 (claim 29).

Further, in response to the Examiner's objections to claim 40, claim 40 is amended in response to the Examiner's comments, and Applicants respectfully request the Examiner to modify the elected group to include amended Claim 40.

No additional fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

In view of the above, withdrawal of the Requirement for the Restriction is requested, and an early action on the merits of the Claims is courteously solicited.

Respectfully submitted,



DAVID A. JACKSON
Attorney for Applicant(s)
Registration No. 26,742

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 487-5800

Date: 3 December 2001

Marked up Version of Claims 40

40. (Amended Once) A method of preparing a tissue cement protein [of any one of claims 1 to 19], comprising expressing a vector [according to any one of claims 35 to 37] comprising a nucleic acid molecule encoding the protein of claim 1, in a host cell and culturing said host cell under conditions where said protein is expressed, and recovering said protein thus expressed.